

In re: HEARTLAND KENNELS, INC., A SOUTH DAKOTA CORPORATION; AND HALVOR SKAARHAUG, AN INDIVIDUAL.
AWA Docket No. 02-0004.
Ruling Denying Motion to Postpone Proceedings.
Filed October 22, 2002.

AWA – Failure to file timely answer.

Respondent moved for a postponement until their witness was released from incarceration in one to three years. The JO ruled that the Respondent's failure to file a timely answer to the Complaint has resulted in an admission to the complaint under the rules and that no purpose would be served by waiting for the release of Respondent's witness.

Colleen A. Carroll, for Complainant.
Respondents, Pro se.
Ruling issued by William G. Jenson, Judicial Officer.

Heartland Kennels, Inc., and Halvor Skaarhaug [hereinafter Respondents] filed a "Motion to [P]ostpone [P]roceedings" on October 8, 2002, requesting that I postpone this proceeding until Terry McGloghlon is released from South Dakota State prison. Respondents state that Mr. McGloghlon is scheduled to be released from prison between March 2003 and March 2005. (Mot. to Postpone Proceedings at 1.) I provided Bobby R. Acord, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], 8 days in which to respond to Respondents' Motion to Postpone Proceedings. Complainant failed to file a timely response to Respondents' Motion to Postpone Proceedings. On October 21, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondents' Motion to Postpone Proceedings.

Respondents contend this proceeding should be postponed because Respondents have a defense to the allegations of the Complaint, and Respondents cannot adequately prepare their defense while Mr. McGloghlon is incarcerated (Mot. to Postpone Proceedings at 1-2).

Respondents' request to postpone the proceeding in order to prepare a defense to the allegations of the Complaint comes too late to be granted. Complainant instituted this proceeding under the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice]. Sections 1.136(a), 1.136(c), 1.139, and 1.141(a) of the Rules of Practice clearly state an answer to a complaint must be filed within 20 days after the Hearing Clerk serves it on a respondent and the consequences of failing to file a timely answer, as follows:

§ 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding

(c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

The Hearing Clerk served Respondents with the Complaint on October 15, 2001.¹ Respondents failed to file an answer within 20 days after the Hearing Clerk served them with the Complaint. Moreover, when Respondents did file an answer on January 24, 2002, 3 months 9 days after being served with the Complaint, Respondents failed to deny or otherwise respond to the allegations of the

¹United States Postal Service Domestic Return Receipts for Article Number 7099 3400 0014 4584 8479 and Article Number 7099 3400 0014 4584 8462.

Complaint.² Respondents' failure to file a timely answer is deemed, for purposes of this proceeding, an admission of the allegations of the Complaint and constitutes a waiver of hearing (7 C.F.R. §§ 1.136(c), .139, .141(a)). Respondents' failure to deny or otherwise respond to the allegations of the Complaint is deemed, for purposes of this proceeding, an admission of the allegations of the Complaint and constitutes a waiver of hearing (7 C.F.R. §§ 1.136(c), .139, .141(a)).

Accordingly, no purpose would be served by my postponing the proceeding until Mr. McGloghlon is released from South Dakota State prison so that Respondents can prepare a defense to allegations which they are deemed to have admitted.

Respondents also contend the postponement of this proceeding will not prejudice Complainant (Mot. to Postpone Proceedings at 1-2).

Respondents are deemed, for the purposes of this proceeding, to have admitted the allegations of the Complaint. Therefore, even if I found that Complainant would not be prejudiced by my postponing this proceeding, that finding would not constitute a basis for postponing the proceeding so that Respondents can prepare a defense to allegations which they are deemed to have admitted.³

For the foregoing reasons, I deny Respondents' Motion to Postpone Proceedings.

²Respondents' January 24, 2002, filing states in its entirety:

To whom it may concern

I was not aware of the original correspondence untill [sic] the Post Master asked me to sign the enclosed paper they were dropped off at my 89 year old mothers [sic] place and she forgot to give them to me. As far as response I have not sold a pup or dog since 1999 - I surrendered my license in Jan 2000 and surrendered the dogs in the Fall of 2000. USDA inspectors told me that would be the end of it all - am surprised to see this now.

Halvor Skaarhaug
RR 1 Box 27
Greenville, SD
57239

³See *In re Anna Mae Noell*, 58 Agric. Dec. 130, 146 (1999) (stating even if complainant would not be prejudiced by allowing respondents to file a late answer, that finding would not constitute a basis for setting aside the default decision), *appeal dismissed sub nom. The Chimp Farm, Inc. v. United States Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); *In re Dean Byard*, 56 Agric. Dec. 1543, 1561-62 (1997) (rejecting respondent's contention that complainant must allege or prove prejudice to complainant's ability to present its case before an administrative law judge may issue a default decision; stating the Rules of Practice do not require, as a prerequisite to the issuance of a default decision, that a respondent's failure to file a timely answer has prejudiced complainant's ability to present its case).